



**DECISION AND STATEMENT OF REASONS OF JAN TODD, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE
CHAMBER PRESIDENT**

Under Rule 8 and 5 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

The Property at 101 The Moorings Dalgety Bay Fife, KY11 9GP

Case Reference: FTS/HPC/PR/20/2341

Mr David Grierson 2 Chamfron Gardens, Stirling, FL77XU ("the Applicant")

**Mr Clive Loble 25 Young Terrace, Cowdenbeath, Fife
(the Respondent)**

1. On 8th November 2020, an application was received from the Applicant. The application was made under Rule 69 of the Procedural Rules, being an application for an order for damages for unlawful eviction from the Property.
2. One photograph was lodged with the application. The Applicant stated he was seeking that the Respondent cease contact with him and withdraw any claims against him.
3. The Tribunal requested further information from the applicant by letter dated 20th November 2020. The Tribunal asked for the following information:-

"I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following:

1. Your application is made under Rule 69 of the Tribunal Procedure Rules which seeks an order for payment of damages for unlawful eviction under section 36(3) of the Housing (Scotland) Act 1988 (Act). Section 36(3) of the Act is in respect of unlawful eviction from an assured tenancy. Damages for unlawful eviction under section 36 must be calculated in accordance with section 37 of the Act which provides:

S. 37 The measure of damages.

(1)The basis for the assessment of damages referred to in section 36(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between—

(a)the value of the landlord's interest determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and

(b) the value of the landlord's interest determined on the assumption that the residential occupier has ceased to have that right.

2. Please provide: a. Copy of the tenancy agreement between you and the Respondent;

b. Your assessment of damages calculated under section 37 of the Act and the valuations in support of that;

c. Fuller details (including a timeline) of the alleged conduct by the Respondent which led you to leave the Property.

Please reply to this office with the necessary information by 4th December 2020. If we do not hear from you within this time, the President may decide to reject the application.

4. No response was received from the Applicant and the tribunal wrote again on 29th December saying:- I refer to your recent application which has been referred to the Chamber President for consideration.

*Before a decision can be made, we need you to provide us with the following:
Please provide the information requested in the Tribunal's letter of 20
November.*

*Please reply to this office with the necessary information by 12 January
2021. If we do not hear from you within this time, the President may decide
to reject the application.*

5. A Ms Leung responded by e-mail on the afternoon of 29th December saying
“Good afternoon Mr David Grierson has been hospitalized twice so please
accept the reasons for the delay”. She did not indicate when the Applicant may
be able to respond.
6. The Tribunal wrote again on 28th January 2021 after allowing further time for
the Applicant to respond and stated: “*The legal member notes that a further
information request was sent on 20 November 2020, with a reminder being
sent on 29 December, and a response was sent that same date by a Ms.
Linda Leung advising that you had suffered from ill health and this had led
to the delay in responding to the further information request. Can you please
now confirm whether you are in a position to deal with the further information
requests for both applications; and if not what time period do you consider
that you will be able to respond?*

*1. Your application is made under Rule 69 of the Tribunal Procedure Rules
which seeks an order for payment of damages for unlawful eviction under
section 36(3) of the Housing (Scotland) Act 1988 (Act). Section 36(3) of the
Act is in respect of unlawful eviction from an assured tenancy. Damages for
unlawful eviction under section 36 must be calculated in accordance with
section 37 of the Act which provides:*

*37 The measure of damages. (1)The basis for the assessment of damages
referred to in section 36(3) above is the difference in value, determined as
at the time immediately before the residential occupier ceased to occupy the
premises in question as his residence, between— (a) The value of the
landlord's interest determined on the assumption that the residential
occupier continues to have the same right to occupy the premises as before*

that time; and (b) The value of the landlord's interest determined on the assumption that the residential occupier has ceased to have that right.

2 Please provide: a. Copy of the tenancy agreement between you and the Respondent;

b. Your assessment of damages calculated under section 37 of the Act and the valuations in support of that;

c. Fuller details (including a timeline) of the alleged conduct by the Respondent which led you to leave the Property.

d. Please provide the documents referred to in the application, but not submitted with it”

Please reply to this office with the necessary information by 11 February 2021. If we do not hear from you within this time, the President may decide to reject the application.

7. The Applicant not replied to the Tribunal.

DECISION

8. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

9.

"Rejection of application

Rule 5 (1) An Application is held to have been made on the date that it is lodged if on that date it is lodged in the manner as set out in rules 43, 47, to 50, 55, 59,61,65,to 70,72,75 to 91, 93 to 95,98 to 101,103 or 105 to 111 as appropriate.

(2) the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal

under the delegated powers of the Chamber President, may request further documents and the application is to be held made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if –

(a) they consider that the application is frivolous or vexatious;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a

decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

10. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 5(4) and Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

11. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:-
"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
12. The applicant has failed to respond to the Tribunal's request for further information and documents, in breach of Rule 5 and as a result information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success has not been made available. In terms of Rule 5 the application should not be accepted as outstanding documents have not been received. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.
13. In particular the applicant has raised this action under Rule 69 an application for damages for unlawful eviction by a former residential occupier under Section

36(3) of the Housing (Scotland) Act 1988 (hereinafter referred to as the Act). The applicant has not responded or provided the mandatory documents asked for by the Tribunal in their letters of 20th November 2020, 29th December 2020 and 28th January 2021. In particular the Tribunal requires details of damages sought based on 37 of the 1988 Act and this has not been provided. It is a mandatory requirement in terms of S36 of the Act, the action is incompetent and therefore frivolous and falls to be rejected. In addition the Applicant has not provided a copy of the tenancy agreement or given details of the whether the conduct led to the eviction of the tenants or occupiers. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural Rules.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Jan Todd
Legal Member
24th February 2021